**SALLEH KILONG**

**v.**

**SUPERINTENDENT OF LANDS & SURVEYS & ANOR**

HIGH COURT SABAH & SARAWAK, MIRI
SULAIMAN DAUD JC
[SUIT NO: 22-1995]
6 DECEMBER 2000

***NATIVE LAW AND CUSTOM:*** *Land dispute - Customary rights over land - Existence of - Whether plaintiff unlawfully occupied said land - Whether plaintiff had acquired customary rights over said land*

For many years prior to 1 January 1958, the plaintiff's deceased father and the plaintiff have exercised rights over a piece of land by clearing it, planting rubber and fruit trees and by the occupation thereof. In so doing the plaintiff pleaded that he had acquired native customary rights over the said land. However by a notification published in the gazette dated 24 December 1982 the second defendant declared the said land to be a Government reserve for the purpose of a park and that it was later developed into a school. The plaintiff asserted that the act of the second defendant in declaring the said land to be a park and developing the same into a school without prior extinguishments of the plaintiff's native customary rights and payment of compensation were wrong in law and constituted wrongful interference with his rights and enjoyment over the said land.

The issues as regard liability as have been mutually agreed between the parties for determination by the court are as follows: (i) was the land claimed by the plaintiff as his native customary rights land an ex-Shell concession area? (ii) whether, by virtue that it was an ex-Shell concession area, no native customary rights could be created or acquired by the plaintiff? and (iii) was there any need for the second defendant to extinguish the plaintiff's native customary rights over the said land and to pay compensation before declaring the said land to be a Government reserve for a park or developing it into a school?

**Held:**

**[1]** It is not disputed that the said land is situated in that area of land which was reserved for the operation of the Sarawak Shell Oilfields Limited ("SSOL") pursuant to the Rajah Order (No xxix of 1921) made on 15 November 1921 ("the 1921 Order"). The 1921 Order also

provides for the notification of the occupiers of the land under permit that the land so occupied belongs to the Government and that they will only be entitled to be compensated in respect of building erected or plant planted thereon. In other words the rights of the holder of the permit is not attached to the land.

**[2]** It can be safely concluded that the land became an excepted area not earlier than 1954. The said land was within the Shell concession area for the period beginning from 1921 and ending at the earliest in 1954.

**[3]** State land as defined in the Land Code means, *inter alia*, all land for which no document of title has been issued. The areas of land reserved for SSOL falls within the said definition. The fact that the said land is reserved land lawfully constituted under written law will not change its status as state land.

**[4]** From s. 5(2)(i) of the Land Code, the only inference that can be made is that native customary rights may be acquired or created only over state land.

**[5]** Being state land the onus is, by virtue of the presumption under s. 5(7) of the Land Code, on the plaintiff to prove that he occupied the said land under a permit.

**[6]** In this action, the plaintiff has failed to adduce any evidence whatsoever that he occupied the said land under permit for the period it was reserved as a Shell concession area. In conclusion, the plaintiff was in unlawful occupation of state land during the period in which it was reserved for SSOL.

**[7]** Hence, the plaintiff has not acquired any customary rights over the said land to require any right to be extinguished or to entitle the plaintiff to any compensation in respect thereof.

*[Judgment for the defendant.]*

**Case(s) referred to:**

*Ara Aman & Ors v. Superintendant of Land & Mines, 2nd Division [1975] 1 MLJ 208* ***(refd)***

*Sidek Mohamad & Ors v. The Government of Perak & Ors [1982] 1 MLJ 313* ***(refd)***

**Legislation referred to:**
Evidence Act 1950, ss. 103, 104
Federal Constitution, art. 13
Land Code (Cap 81) (Sarawak), ss. 2, 5(1), (2)(i), (ii), (7), 43(1), (2), (3), (4), (5), (6)
Land (Excepted Area) Order 1964, items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 of the schedule, paras 2, 3
Land Ordinance (Cap 27) (Sarawak), ss. 98, 99, 100, 101
Land Regulations 1920, s. 22
Limitations Ordinance (Cap 49) (Sarawak), s. 20 (Cap 49)
National Land Code, ss. 2, 5(1), (7), 43
Order No L-2, 1931, s. 2, paras 2, 3
Order No L-7, 1933, s. 66

**Other source(s) referred to:**
Jacob & Goldrein, *Pleadings, Principle and Practice*, 1990, p 133-134

*Reported by Yow Ting Fong*

## JUDGMENT

**Sulaiman Daud JC:**

By writ dated 22 April 1995 the plaintiff brought proceedings against the Superintendent of Land and Surveys, Miri Division and the Government of Sarawak claiming declarations, *inter alia:* (a) that the plaintiff was at all material times a licensee under native customary rights of all that parcel of land situate at Miri/Pujut Road, measuring approximately six acres in area, and forming part of Lot 660 Block 8 Miri Concession Land District ("the said land"); or alternatively (b) that as on 24 December 1994 the defendants' right, title and share to the said land have been extinguished by adverse possession on the part of the plaintiff within the meaning of s. 20 of the Limitations Ordinance (Cap. 49); and (c) that the act of the defendants to declare the said land as a park and to take and develop it into a school constitutes a wrongful interference with the plaintiff's enjoyments of his native customary rights therein. However in the course of submission the plaintiff abandons the alternative prayer as in (b) aforesaid.

The plaintiff's case as pleaded and precisely stated by his learned counsel in his opening statements is as follows. For many years prior to 1 January 1958, the plaintiff's deceased father and the plaintiff have exercised rights over the said land by clearing it, planting rubber and fruit trees and by the occupation thereof. In so doing the plaintiff pleaded that he had acquired native customary rights over the said land. However by a notification published in the gazette dated 24 December 1982 the second

defendant declared the said land to be a government reserve for the purpose of a park and that it was later developed into a school. The plaintiff asserted that the act of the second defendant in declaring the said land to be a park and developing the same into a school without prior extinguishment of the plaintiff's native customary rights and payment of compensation were wrong in law and constituted wrongful interference with his rights and enjoyment over the said land.

The first and second defendants in their statement of defence pleaded, *inter alia:* (a) that the plaintiff had not acquired native customary rights over the said land as the said land was ex-Shell concession area and no native customary rights can be created thereon; (b) that the extinguishment of the plaintiff's native customary rights does not arise as he has not acquired any native customary rights over the said land; (c) that the notification published in the gazette dated 24 December 1982 was proof of the said land being a Government reserve for the purpose of a park; (d) that the development of the said land into a school was proper and according to the law and that there is neither a need to extinguish the native customary rights nor to pay any compensation to the plaintiff; (e) that the declaration of the said land as a Government reserve is not in breach of the principles of natural justice or in violation of art. 13 of the Federal Constitution; and (f) that the second defendant had not lost its rights and title to the said land or such right and title had not been extinguished by reason of the plaintiff's occupation and/or possession of the said land.

**Issues**

The issues as regard liability as have been mutually agreed between the parties at the outset of the hearing for determination by the court are as follows:

(a) Was the land claimed by the plaintiff as his native customary rights land as described in para. 3 of the statement of claim an ex-Shell concession area?

(b) Whether, by virtue that it was an ex-Shell concession area, no native customary rights could be created or acquired by the plaintiff?

(c) Was there any need for the second defendant to extinguish the plaintiff's native customary rights over the said land and to pay compensation before declaring the said land to be a government reserve for a park or developing it into a school?

**Sarawak Shell Concession Area: How Created And When Excepted**

With regard to the first issue, the learned counsel for the plaintiff in the course of his submission admitted that the said land is an ex-Shell concession area. Before embarking to determine the other remaining issues it is convenient at this stage to examine and ascertain firstly on how the said land became Shell concession area and secondly how and when was it excepted therefrom. It is not disputed that the said land is situated in that areas of land which was reserved for the operation of the Sarawak Shell Oilfields, Limited ("SSOL") pursuant to the Rajah Order (No xxix of 1921) made on 15 November 1921 ("the 1921 Order"). Under the said order no person may erect any permanent building or plant up any land within the reserved area without having obtained a permit for that purpose. Such permit may only be issued if the government officer to whom the application is made is satisfied, after reference to the general manager of SSOL, that the issuance thereof will not interfere with the operation of the SSOL, or upon the approval of the general manager himself. The 1921 Order also provides for the notification of the occupiers of the land under permit that the land so occupied belongs to the government and that they will only be entitled to be compensated in respect of building erected or plant planted thereon. In other words the rights of the holder of the permit is not attached to the land.

When the laws relating to land were consolidated in the Land Ordinance (Cap. 27) the provisions of the 1921 Order was incorporated thereto as Part IX containing ss. 98 to 101. The said provisions were subsequently re-enacted, with the necessary modifications and adaptations, as s. 43 of the Land Code (Cap. 81) ("the Land Code"). Sub-s. (1) thereof sought to exclude the Miri Town Area and any area excepted under sub-s. (2) from the said reserved area. Under sub-s. (2) the minister is empowered by order published in the gazette to declare any area as described therein as excepted area for the purpose of sub-s. (1). The prohibitions on the erection of permanent building or planting of trees without permit are retained in sub-ss. (3) and (4). Unlike the 1921 Order the condition for the issuance of the permit and the terms thereof, which shall not exceed sixty years, were specifically provided in sub-s. (5). It is also provided in sub-s. (6) that the holder of a permit occupy the said land at the pleasure of the government and the right to compensation is only in respect of building and crops as provided in the 1921 Order. The said s. 43 was subsequently deleted by the Land Code (Amendment) Ordinance 1979 which came into force on 8 December 1979.

The crucial issues for determination at this stage are firstly when did the said land become an excepted area for it to be known as an ex-Shell concession area and secondly on whom lies the burden of proving the same. By virtue of the definition of "excepted area" in the repealed sub-s. 43(2) the said land may be excepted either under s. 98 of the former Land Ordinance (Cap 27) or under the repealed sub-s. 43(2). On the burden of proof I agree with the submission of the learned counsel for the plaintiff that the burden of establishing the defence based upon the said land being Shell concession area is on the defendants by virtue of the plea of confession and avoidance and of ss. 103 and 104 of the Evidence Act 1950 (see Jacob & Goldrein's *Pleadings, Principle and Practice* [1990] at pp. 133-134). With regard to the time when the said land became an excepted area it is necessary to identify the order under which the said land was declared as an excepted area and to examine the cadastral map, identified as "A24", of the concession area within which the said land was located.

DW1, a senior draftsman from Department of Land and Survey Miri, who was called to interpret the cadastral plan "A24" testified that the said land is located in the area coloured light pink in "A24" and falls in the category of land described in legend No. 3 thereof, being land which was excepted by virtue of Government Gazette Notification No. Swk. L.N. 31 dated 7 February 1964, that is the Land (Excepted Area) Order 1964 ("the 1964 Order"). DW1 confirmed that said land is covered by the survey pegs numbers specified in item 1 of the schedule to the 1964 Order and such survey pegs numbers are also comprised in the area coloured light pink with the blue border in the cadastral plan "A24".

The learned counsel for the plaintiff submitted that the evidence of DW1 is unreliable and is of no evidential value based on the several reasons stated by him, that is firstly he was incompetent to testify on the issue as to whether the said land was excepted by the 1964 Order on the ground that he had no personal knowledge of the matters and that he was also not familiar with the procedure of Shell concession area exception and did not prepare the legends on the map; secondly he was unable to give any satisfactory explanation as to why there is a need to have different legends on the Misc. Plan (A24) or the differences in them; thirdly his answer that all lands described in items 1-11 of the Schedule to the 1964 Order were only excepted in 1964 and not before that year was inconsistent with the Explanatory Note of the 1964 Order itself and fourthly his evidence on the said Misc. Plan (A24) was not borne out by the documents, in particular legend No. 3 of the Misc. Plan and Explanatory Note to the 1964 Order.

Before deciding whether DW1 is a reliable witness or otherwise I have to firstly ascertain the purpose for which he was called to testify. During cross-examination DW1 stated that he came to court as a map reader. The documents that were introduced by the parties for the interpretation of DW1 are the cadastral plan in "A24", the cadastral plan in "A23" showing the survey peg numbers of the said land, and the items in the Schedule to the 1964 Order.

With regard to the cadastral plans in "A23" and "A24", DW1 in his testimony confirmed that the said land, ie, Lot 660, is located within the area coloured pink in "A24" and is subject to legend No. 3 thereto. He also identified the location of the said land in "A23" by locating its boundary thereon. I fully accepted the evidence of DWI on these two matters as I did not doubt his competency and ability in making such an interpretation. On his interpretation of the legends in "A24", I agree with the learned counsel for the plaintiff that his explanation thereon is not consistent with the Explanatory Note in the 1964 Order but however it is my finding that such inconsistency alone cannot render his other evidence to be unreliable and inadmissible. In my view for the purpose of the interpretation "A24" and "A23", it shall be sufficient for DW1 to identify the location of the said land thereon and the legend to which it is subject. Having identified the same it shall be the responsibility of this court to interpret the same to determine when the said land became an excepted area. As the said land is situated in the area coloured light pink in "A24" it is without doubt that legend No. 3 is applicable thereto. The said legend No. 3 reads as follows:

> 3. Land already excepted, and specifically excluded from the Land (Excepted Area) Order 1963. (**By virtue of its gazette No LN 31 dated 7.2.64, this Order is in fact gazetted as The Land (Excepted Area) Order 1964** (addition is mine))

From reading legend No. 3 in "A24" I find that the areas covered thereby include the areas which were excepted both under the 1964 Order and the earlier orders and by reason thereof the date when the said land became an excepted area cannot be ascertained by the construction and interpretation of "A24" alone.

Whether the cadastral plan in "A23" and the 1964 Order ("D2") will throw any light on this issue. According to DW1 the survey pegs numbers of Lot 660, that is the said land, appeared in item 1 of the schedule to the 1964 Order, commencing from the point at 4/682 and therefrom by straight line joining successively survey pegs nos. 1, 16, 143, 144, 72, 47, 46, 48, 31, 10, 22, 11, 12 and so forth. He than traced and identified the survey

pegs numbers as appearing in "A23". I see no reason to doubt his ability and competency to make such an interpretation and as such I fully accepted his evidence on this matter. However in my view it is not the responsibility of DW1 as a map reader to ascertain whether such areas of land were excepted by the 1964 Order or the earlier orders or both. This can be answered and ascertained from the relevant provisions of the said order itself and the Explanatory Note thereto.

Paragraphs 2 and 3 of the 1964 Order provide as follows:-

> 2. The areas of land described in the Schedule are declared to be excepted from the areas of land reserved to the Sarawak Shell Oilfields Limited under subsection (1) of section 43 of the Code.
>
> 3. The Schedule to the Land (Excepted Area) Order is varied accordingly.

The Explanatory Note to the 1964 Order provides as follows:

> EXPLANATORY NOTE
>
> The areas described in items 1 and 11 of the Schedule **include those areas of land previously excepted under the provisions of subsection (2) of section 43 of the Land Code** and described as items 3, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 33 and 37 of the Schedule to the Land (Excepted Area) Order (Vol. III. P. 164.) (emphasis added).

From the Explanatory Note it is apparently clear that the areas of land as appearing in items 1 and 11 thereof not only cover the areas sought to be excepted by the said Order but also includes areas of land which were previously excepted under the said sub-s 43(2), which areas are as described in the items specified in the Land (Excepted Area) Order (Vol. VIII. p. 164) ("Vol. VIII Order"). Since the area of the said land is included in item 1 of the Schedule to the 1964 Order it is not possible by looking at the 1964 Order alone to ascertain whether or not such area was excepted by the said Order. The Vol. VIII Order is a Government Gazette and by virtue thereof I can give judicial notice to it. Upon closer perusal it is without doubt that the Vol. VIII Order is the principal order incorporating all orders previously made relating to the declaration of excepted areas, the earliest of which was gazetted in 1954. In the absence of any evidence to the contrary it is not possible for me to determine whether the area of the said land is included in the areas of land earlier excepted under the Vol. VIII Order. In view of this uncertainty it cannot be said that the said land was excepted by the 1964 Order but however it can be safely concluded from the Vol. III Order that the said land became an excepted area not earlier than 1954, being the year when the first Order was made under the Vol. III Order.

**Shell Concession Area: Whether Native Customary Rights May Be Created**

With this factual background I will now consider the next point at issue, that is whether native customary rights may be created or acquired in respect of land reserved as Shell concession area. I have earlier made my finding for the reason stated therefor that the said land was within the Shell concession area for the period beginning from 1921 and ending at the earliest in 1954 ("the relevant period"). The question is whether a native customary rights may be created over the said land during the relevant period and if answered in the positive on whom lies the burden of proving the same. I will firstly deal with the first issue and for the determination thereof it shall be necessary to look at the provisions of the written law under which such reserve was created. The relevant laws are the 1921 Order, the Land Ordinance (Cap 27) and the Land Code. Paragraph 2 of the 1921 Order and s. 99 of Land Ordinance (Cap 27) expressly prohibit the erection of a building of a permanent nature or the planting of anything within the reserved area without having obtained a permit for the purpose. When the Land Ordinance (Cap 27) was re-enacted as the Land Code the reserved area was saved and continued to have effect by virtue of s. 43 thereof. Sub-s. 43(2) also prohibits the erection of buildings or the planting of trees or crops upon any land within the reserved area. The next point at issue is whether the plaintiff is a person who occupied the said land in accordance with the condition specified under the laws to which it relates.

To answer this question it is necessary to firstly ascertain the status of the said land, that is whether the land so reserved remains as state land or otherwise. Learned counsel for the defendants contended that notwithstanding that such land had been reserved for Shell it remains as state land as defined in s. 2 of the Land Code. The learned counsel for the plaintiff contended otherwise and gave two grounds in support thereof, firstly he submitted that since the said land was occupied before 1921 the definition of "state land" under the Land Regulations 1920 ("the 1920 Regulations") shall apply and by virtue of such definition land which was lawfully occupied is not state land, and secondly the said land is deemed to have ceased from being state land by virtue of the terms of its reservation to SSOL under the relevant laws. With respect I cannot agree with the submission of the learned counsel for the plaintiff as I am of the view for the purpose of this application the definition of "state land" under the Land Code shall apply for the simple reason that the 1920 Regulations was repealed by s. 2 of the 1931 Order. Sub-s. (1) of s. 5 of the Land Code provides that as from 1 January 1958, native customary rights may be created in accordance with native customary law of the community or

communities concerned by the methods specified in sub-s. (2). However proviso (ii) of the said sub-s. (2) provides that the question whether any such right has been acquired or has been lost or extinguished shall, save in so far as this Code makes contrary provisions, be determined by the law in force immediately prior to 1 January 1958. The 1920 Regulations, being repealed by the 1931 Order effective on 1 January 1931, is not one of such laws in force immediately prior to 1 January 1958.

State land as defined in the Land Code means, *inter alia*, all land for which no document of title has been issued. The areas of land reserved for SSOL falls squarely within the said definition, being land in respect of which no title has been issued. The fact that the said land is reserved land lawfully constituted under written law will not change its status as state land. However if I accept the argument that the said land is not state land then the question on this second agreed issue can be resolved at this stage without further deliberation. Proviso (i) of sub-s. (2) of s. 5 of the Land Code clearly provides that until a document of title has been issued in respect thereof, such land shall continue to be state land. From the said provisions the only inference that can be made is that native customary rights may be acquired or created only over state land.

The further question to be answered is whether a native customary rights can be acquired or created in respect of state land that has been lawfully constituted as reserved land. In the case of *Ara binte Aman & Ors v. Superintendant of Land & Mines, 2nd Division* [1975] 1 MLJ 208, on an appeal against a claim for native customary rights under the Land Code it was held that as the land was government reserve, no customary right could be exercised over it. The learned judge based his finding on s. 10(2) of the Land Code which provides as, follows:

> No person whether a native or non-native may occupy any Native Customary Land or any Reserved Land save under and in accordance with the condition applicable thereto by virtue of this or any other written law, and any person in occupation thereof shall be deemed to be in unlawful occupation of State land and section 209 shall apply thereto.

Notwithstanding the decision of *Ara*'s case, before I proceed to consider whether native customary rights may be acquired or created over reserved land the plaintiff must firstly prove that he is in occupation of the reserved land in accordance with the condition prescribed under the relevant laws. As can be seen both the 1921 Order and the repealed s. 43 of the Land Code, being the relevant laws, prohibit the occupation or the planting up of the areas of land so reserved without having obtained a permit for the purpose. Being state land the onus is, by virtue of the presumption under

s. 5(7) of the Land Code, on the plaintiff to prove that he occupied the said land under a permit. In this action the plaintiff have failed to adduce any evidence whatsoever that he occupied the said land under permit for the period it was reserved as Shell concession area.

However the learned counsel for the plaintiff further argued that the plaintiff is in lawful occupation of the said land even without permit as the said land was his temuda land and that he had acquired native customary rights in respect of the land before it was so reserved in 1921 by virtue of the 1920 Regulations. I agree that there is a strong force in that contention which merits serious consideration and that brings me to the next related issue.

**Whether Native Customary Right May Be Created Or Acquired Before The Land Was Reserved To SSOL**

As stated earlier native customary rights is created under s. 5(1) of the Land Code beginning from 1 January 1958 in accordance with sub-s. (2) thereof. The said sub-s. (2) provides for the method of acquiring native customary rights and includes the felling of virgin jungle and the occupation of land thereby cleared, the planting of land with fruit trees and the occupation or cultivation of land. Proviso (ii) to the subsection provides that the question whether any such right has been acquired or has been lost or extinguished shall, save in so far as the Land Code makes contrary provisions, be determined by the law in force immediately prior 1 January 1958. The law relating to land in force immediately before that date is the Land Ordinance (Cap 27) consolidating the 1921 Order, Order No L-2, 1931 ("the 1931 Order"), Order No L-7, 1933 ("the 1933 Order"), and The Land (Land Classification) Ordinance 1948 ("the 1948 Ordinance"). The 1921 Order is the order that constituted the reserved area for SSOL; and the 1931 Order repealed all previous Order and regulations relating to land, other than the 1921 Order. The 1933 Order seeks to provide for settlement of land. As the 1920 Order is no longer in force immediately before 1 January 1958, such Order shall not be applicable in determining whether a native customary rights has been extinguished or acquired for the purpose of the said proviso aforesaid.

With regard to the 1920 Regulations, the learned counsel for the defendants also argued that the 1920 Regulations only entitled a native to occupy land but the occupier thereof must be registered with the Land Office and to be issued with a certificate as specified therein. The learned counsel for the plaintiff on the other hand submitted that the inevitable conclusion from the wording of s. 22 of the 1920 Regulations is that it conferred special right to native. The said s. 22, provides as follows:

22. (I) Under this part lands may be occupied by Natives free from all charges for the cultivation of fruit trees, padi, vegetables, pineapples, sugar cane, bananas, yams and similar cultures in accordance with the customary law provided that where possible claims to fruit groves and farming land shall be registered.

With respect I cannot agree with learned counsel for the plaintiff that the said section provides for the acquisition or creation of native customary rights. It only provides the native who is registered thereunder to the right of occupancy of and not the right to title over the land. In my view the creation of native customary rights in land under the law relating thereto must mean the creation or acquisition of rights attached to the land where the person having such right may be issued with a title thereto or be paid compensation for the extinguishment of such right. I agree with the learned counsel for the defendants that native customary rights was first given recognition in Sarawak under s. 66 of the 1933 Order which were retained and re-enacted in s. 5 of the Land Code.

The question that remain unanswered is whether a native customary rights may be created or acquired over areas of land reserved under SSOL. In my view no such right can be created over such land as the 1921 Order and the repealed s. 43 of the Land Code expressly prohibit the occupation or cultivation of such land without a permit which shall be substantially upon the same conditions as leases of state land save that the terms with any renewals thereof shall not exceed sixty years. From the above it is clear that right to such land is only by the issuance of a permit and not by the method specified in s. 5(2) of the Land Code, by the felling of virgin jungle, the planting of trees or cultivation thereof. In conclusion it is my finding that the plaintiff is in unlawful occupation of state land during the period in which it was reserved for SSOL. It is trite law that squatters have no right either in law or in equity (*Sidek bin Mohamad & Anors v. The Government of Perak & Anors* [1982] 1 MLJ 313). Even if the plaintiff had acquired native customary rights under the 1920 Regulations such rights were extinguished when the said land was reserved for SSOL under the 1921 Order.

**Whether native customary rights acquired between 1954 to 1958**

I have earlier ruled that even though the defendants have failed to establish that the said land was excepted in 1964 but I am certain for the reason aforesaid that it was so excepted not earlier than 1954. Since native customary rights can be created at any time before 1 January 1958, the further question is whether the plaintiff has acquired or created native

customary rights within those period by the method specified in sub-s. 5(2). In the examination-in-chief at p. 3 of the notes of proceedings the plaintiff testified as follows:

> I am claiming a parcel of land at Padang Kerbau Miri where the Sekolah Menengah Agama is situated. I am claiming this land because I was born there. I don't have any other reason for claiming this land because it is my temuda land. It became my temuda land because my grandfather farmed the land. From my grandfather it passed to my father and then to me. Fruit trees were planted on the land, such as dürian, terap, cempedak, langsat. Apart from fruit trees there were other trees planted on the said land such as rubber tree. These rubber trees were also planted by [my] grandfather. I was born in Pujut Padang Kerbau. I was born on the land that I am claiming. I was born in August 1922.

The plaintiff also testified (at p. 5 of the notes of proceedings) that the reason he applied for the land because native customary rights had been created before it was reserved for SSOL. He also testified (at p. 6 of the notes of proceedings) that he moved out from Pujut Padang Kerbau because of his work and when he moved out the house was still there. He further testified (at p. 9 of the notes of proceedings) that when the land was surveyed in 1970 the house was no longer there as it was destroyed by fire in 1941 but the fruit trees were still there. From the aforesaid testimonies it can be concluded that the plaintiff had moved out from Pujut Padang Kerbau before the said house was destroyed by fire in 1941 since he claimed that the said house was still on the land at the time he moved out. There is also no other evidence before this court that the plaintiff had acquired native customary rights by any of the methods specified in sub-s. 5(2) during the period beginning from 1954 to 1958.

On the third agreed issue, it shall be sufficient for me to simply say that the plaintiff has not acquired any customary right over the said land to require any right to be extinguished or to entitle the plaintiff to any compensition in respect thereof.

For the above reasons I dismissed the declarations sought by the plaintiff with cost to the defendants to be taxed unless otherwise agreed.